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COMMONWEALTH of VIRGINIA

> DEPARTMENT OF ENVIRONMENTAL QUALITY

Street address: 629 East Main Street, Richmond, Virginia 23219

Mailing address: P.O. Box 1105, Richmond, Virginia 23218

Fax (804) 698-4500 TDD (804) 698-4021

¹ www.deq.virginia.gov

L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
Director

(804)698-4000

1-800-592-5482

" August 23, 2007

Surface Transportation Board
Section of Environmental Analysis
STB Docket No. AB-55 (Sub No. 680X)
395 East Street, SW
Washington, DC 20423

RE: Federal Consistency Review of the Abandonment of 0.5 mile of Rail Line, CSX
Transportation, City of Portsmouth, DEQ 07-133F.

Dear Mr. Geraci:

The Department of Environmental Quality (DEQ) has completed its review of the Environmental Report (ER) for the above-mentioned for the Abandonment of 0.5 mile of Rail Line in the City of Portsmouth. DEQ is responsible for coordinating Virginia's review of federal environmental documents and responding to federal consistency certifications submitted in accordance federal consistency implementing regulations for the review of activities requiring a federal license or permit (15 CFR, Subpart D, §930.50 et seq.). Pursuant to the Coastal Zone Management Act of 1972, as amended, because this proposed action is subject to a federal permit, license, or approval, it must be conducted in a manner that is consistent with the Virginia Coastal Resources Management Program (VCP).

While the ER submitted does not constitute a formal consistency certification pursuant to CZMA regulations, sufficient information is presented in the document for DEQ to conduct a consistency analysis with respect to the enforceable policies of the VCP. The following agencies participated in this review:

Department of Environmental Quality
Department of Conservation and Recreation

Project Description

According to the ER, CSX Transportation (CSXT) proposes to abandon approximately 0.5-mile of its rail operation between railroad milepost SA 0.28 to railroad milepost SA 0.78 in the City of Portsmouth (Please note that the ER cover letter erroneously refers to the abandonment of railroad in Orlando Florida). Abandonment of this line would result in the removal of the rail, crossties, and possibly the upper layer of ballast. CSXT does not intend to disturb any sub grade or sub grade structures. Removal of the rail line would result in the elimination of three at-grade crossings.

Federal Consistency Under the Coastal Zone Management Act

The VCP consists of a network of policies administered by several agencies (attached). DEQ, as the lead agency for the VCP, coordinates the review of federal consistency certifications with agencies administering the enforceable policies of the VCP.

Based on our review of the ER and the comments submitted by DEQ and the Department of Conservation and Recreation (OCR), agencies administering the enforceable policies of the VCP applicable to this action, DEQ concurs that this proposal is consistent with the VCP. While DEQ concurs that the abandonment of the rail line is consistent with the VCP, project activities must also be carried out in strict accordance with all other applicable state, federal, and local laws and regulations.

Based on the information contained in the ER, it appears that the proposed activity would have no effect on the following enforceable policies: fisheries management; subaqueous lands management; wetlands management; dunes management; point source pollution control, shoreline sanitation; and coastal lands management. However, please see the comments below with respect to the wetlands management, non-point source pollution control, and air pollution control enforceable policies.

1. Wetlands Management Potential adverse impacts to water quality and wetlands resulting from surface runoff must be avoided or minimized. Minimization can be achieved by using Best Management Practices (BMPs).

DEQ's Office of Virginia Water Protection (OVWP) staff reviewed the ER, National Wetland Inventory (NWI) mapping, and aerial photography and determined that a Virginia Water Protection Permit (VWPP) (9 VAC 25-210-10 et seq.) will not likely be required for the proposed action.

Recommendations

While DEQ-OVWP does not anticipate significant impacts to wetlands and water quality, staff recommends the following measures to minimize impacts:

- an onsite survey should be conducted to identify potential wetlands and other state waters within the project area;

- heavy equipment should work from uplands to the greatest extent possible and utilize mats and strict erosion and sediment controls for work that must be conducted from within surface waters; and
- employ measures to prevent the release of oil or fuel from heavy equipment into surfacewaters.

For additional information contact Steve Hardwick, DEQ-OVWP at (804) 698-4168.

2. Non-Point Source Pollution Control. According to the Department of Conservation and Recreation (OCR), projects on privately- or locality-owned lands that involve a land-disturbing activity of 2,500 square feet or more in a Chesapeake Bay Preservation Area require that the property owner submit a site-specific erosion and sediment control (ESC) plan to the appropriate local government for review and approval pursuant to the local ESC ordinances. The ESC plan must be approved prior to initiation of any land disturbance at the project site. All regulated land-disturbing activities associated with the project must be covered by an approved plan. Note that dependent on local requirements, a separate stormwater management (SWM) plan may be required for this project. Local ESC and SWM requirements should be requested through the City of Portsmouth.

OCR is responsible for the issuance, denial, revocation, termination and enforcement of the Virginia Pollutant Discharge Elimination System (VPDES) programs related to municipal separate storm sewer systems (MS4s) and construction activities for the control of stormwater discharges from MS4s and land-disturbing activities under the Virginia Stormwater Management Program.

Therefore, for projects involving land-disturbing activities of 2,500 square feet or more located in Chesapeake Bay Preservation localities, the property owner/authorized agent is required to apply for registration coverage under the General Permit for Discharges of Stormwater from Construction Activities. General information and registration forms for the General Permit are available on DCR's website at <http://www.dcr.virginia.gov/sw/vsmp.htm#geninfo>. Specific questions regarding the VPDES Stormwater Management Program requirements should be directed to Holly Sepety, DCR, at (804) 225-2613.

3. Air Pollution Control. The project site is located in the Hampton Roads ozone (63) maintenance area. Contributors of ozone pollution are volatile organic compounds (VOCs) and oxides of nitrogen (NO_x). CSXT should ensure that all reasonable precautions are taken to limit emissions of VOCs and NO_x, principally by controlling or limiting the burning of fossil fuels.

While this project is not likely to adversely affect air quality, during construction fugitive dust must be kept at a minimum. This requires, but is not limited to, measures such as application of water to suppress dust, and washing down construction vehicles and paved roadways immediately adjacent to the construction site (9 VAC 5-50-60 et seq.).

For additional information, please contact DEQ's Tidewater Regional Office at (757) 518-2000.

Additional Environmental Considerations

1. Solid and Hazardous Wastes. DEQ administers the Virginia Solid Waste Management Regulations and the Virginia Hazardous Waste Management Regulations. Any soil that is suspected of contamination or wastes that are generated must be tested and disposed of in accordance with applicable Federal, State, and local laws and regulations. Some of the applicable State laws and regulations are:

- Virginia Waste Management Act (Code of Virginia Section 10.1-1400 et seq.);
- Virginia Hazardous Waste Management Regulations (VHWMR) (9VAC 20-60);
- Virginia Solid Waste Management Regulations (VSWMR) (9VAC 20-80); and
- Virginia Regulations for the Transportation of Hazardous Materials (9VAC 20-110).

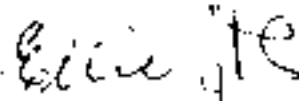
Some of the applicable Federal laws and regulations are:

- Resource Conservation and Recovery Act (RCRA) (42 U.S.C. Section 6901 et seq. and the applicable regulations contained in Title 40 of the Code of Federal Regulations); and
- U.S. Department of Transportation Rules for Transportation of Hazardous materials (49 CFR Part 107).

Contact DEQ's Tidewater Regional Office at (757) 518-2000, concerning location and availability of waste management facilities in the project area.

Thank you for your inquiry. We appreciate your interest in complying with Virginia's environmental legislation. If you have any questions, please do not hesitate to call me at (804) 698-4325 or John Fisher at (804) 698-4339.

Sincerely,



Ellie L. Irons, Manager
Office of Environmental Impact Review

Attachments

CC. Michelle Hollis, DEQ-TRO
Allison Dunaway, DEQ-OWWP
Dave Geraci, CSXT



COMMONWEALTH of VIRGINIA

L. Preston Bryant, jr.
Secretary of Natural Resources

DEPARTMENT OF ENVIRONMENTAL QUALITY
Main ^ ^ Richmond ^ virginia 232 , 9

Mailing address: P. O. Box 10009, Richmond, Virginia 23240
Fax (804) 698-4500 TDD (804) 698-402 1
www.deq.virginia.gov

David K. Palyor
Director

(804) 698-4000
1-800-592-5482

Attachment 1

Enforceable Regulatory Programs comprising Virginia's Coastal Resources Management Program (VCP)

- a. Fisheries Management - The program stresses the conservation and enhancement of finfish and shellfish resources and the promotion of commercial and recreational fisheries to maximize food production and recreational opportunities. This program is administered by the Marine Resources Commission (VMRC); Virginia Code 28.2-200 to 28.2-713 and the Department of Game and Inland Fisheries (DGIF); Virginia Code 29.1-100 to 29.1-570.

The State Tributyltin (TBT) Regulatory Program has been added to the Fisheries Management program. The General Assembly amended the Virginia Pesticide Use and Application Act as it related to the possession, sale, or use of marine antifoulant paints containing TBT. The use of TBT in boat paint constitutes a serious threat to important marine animal species. The TBT program monitors boating activities and boat painting activities to ensure compliance with TBT regulations promulgated pursuant to the amendment. The VMRC, DGIF, and Virginia Department of Agriculture Consumer Services (VDACS) share enforcement responsibilities; Virginia Code 3.1-249.59 to 3.1-249.62.

- b. Subaqueous Lands Management - The management program for subaqueous lands establishes conditions for granting or denying permits to use state-owned bottomlands based on considerations of potential effects on marine and fisheries resources, tidal wetlands, adjacent or nearby properties, anticipated public and private benefits, and water quality standards established by the Department of Environmental Quality (DEQ). The program is administered by the Marine Resources Commission; Virginia Code 28.2-1200 to 28.2-1213.
- c. Wetlands Management - The purpose of the wetlands management program is to preserve wetlands, prevent their despoliation, and accommodate economic development in a manner consistent with wetlands preservation.
 - (1) The tidal wetlands program is administered by the Marine Resources Commission; Virginia Code 28.2-1301 through 28.2-1320.
 - (2) The Virginia Water Protection Permit program administered by DEQ includes protection of wetlands -both tidal and non-tidal; Virginia Code §62.1-44.15:5 and Water Quality Certification pursuant to Section 401 of the Clean Water Act.

Attachment 1 continued

Page 2

- d. Dunes Management - Dune protection is carried out pursuant to The Coastal Primary Sand Dune Protection Act and is intended to prevent destruction or alteration of primary dunes. This program is administered by the Marine Resources Commission; Virginia Code 28.2-1400 through 28.2-1420.
- e. Non-point Source Pollution Control - (1) Virginia's Erosion and Sediment Control Law requires soil-disturbing projects to be designed to reduce soil erosion and to decrease inputs of chemical nutrients and sediments to the Chesapeake Bay, its tributaries, and other rivers and waters of the Commonwealth. This program is administered by the Department of Conservation and Recreation; Virginia Code 10.1-560 et seq..

(2) Coastal Lands Management is a state-local cooperative program administered by the OCR's Division of Chesapeake Bay Local Assistance and 84 localities in Tidewater (see i) Virginia; Virginia Code §10.1-2100 -10.1-2114 and 9 VAC10-20 et seq.
- f. Point Source Pollution Control - The point source program is administered by the State Water Control Board (DEQ) pursuant to Virginia Code. 62.1-44.15. Point source pollution control is accomplished through the implementation of:
 - (1) the National Pollutant Discharge Elimination System (NPDES) permit program established pursuant to Section 402 of the federal Clean Water Act and administered in Virginia as the Virginia Pollutant Discharge Elimination System (VPDES) permit program.
 - (2) The Virginia Water Protection Permit (VWPP) program administered by DEQ; Virginia Code §62.1-44.15:5 and Water Quality Certification pursuant to Section 401 of the Clean Water Act.
- g. Shoreline Sanitation - The purpose of this program is to regulate the installation of septic tanks, set standards concerning soil types suitable for septic tanks, and specify minimum distances that tanks must be placed away from streams, rivers, and other waters of the Commonwealth. This program is administered by the Department of Health (Virginia Code 32.1-164 through 32.1-165).
- h. Air Pollution Control - The program implements the federal Clean Air Act to provide a legally enforceable State Implementation Plan for the attainment and maintenance of the National Ambient Air Quality Standards. This program is administered by the State Air Pollution Control Board (Virginia Code. 10-1.1300 through §10.1-1320).
- (i) Coastal Lands Management is a state-local cooperative program administered by the OCR's Division of Chesapeake Bay Local Assistance and 84 localities in Tidewater, Virginia established pursuant to the Chesapeake Bay Preservation Act; Virginia Code §10.1-2100 -10.1-2114 and Chesapeake Bay Preservation Area Designation and Management Regulations; Virginia Administrative Code 9 VAC10-20 et seq.

Fisher.John

From: Hardwick,Steven
Sent: Tuesday, July 10, 2007 8:27 AM
To: Fisher.John
Cc: Dunaway.Allison
Subject: Scoping comments from Water Quality Div - CSX RR Abandonment, Portsmouth

John,

I've attached comments from the Water Quality Division (Office of Water Permits and Virginia Water Protection Permit Program) in response to CSX's scoping request for their proposed railroad abandonment in Portsmouth. Allison Dunaway advised me that you'll be compiling the comments for inclusion in an official response letter. Please give me a call if you have any questions.

Thanks,

Steve Hardwick

Virginia Water Protection Program
Department of Environmental Quality
629 E. Main Street
PO Box 1105
Richmond, Virginia 23218
Phn 804-698-4168
Fax 804-698-4347

Office of Water Permit Programs - Kyle Winter, Manager

I don't see where any VPDES permits administered by DEQ would be necessary for this activity, as no process wastewater should be generated and they're not exposing to stormwater any materials that aren't already present on site.

I also don't believe that land-disturbing activity is taking place here; although I would be hard-pressed to justify any requirement that this would be covered under the construction storm water permit, that program is administered by DCR and I can't formally make that kind of determination.

Virginia Water Protection Permit Program - Steve Hardwick, VWP Permit Writer

Based on the scope of work an onsite survey should be conducted to determine the location, extent, and type of surface waters present. CSX should avoid and minimize impacts to surface waters to the greatest extent practicable. Based on the information provided, a review of current National Wetland Inventory mapping and aerial photography, a VWP Permit will not likely be required. Should an onsite survey reveal jurisdictional wetlands or other state waters within the project area, heavy equipment should work from uplands to the greatest extent possible and utilize mats and strict erosion and sediment controls for work that must be conducted from within surface waters. Caution should be taken to ensure prevention of the release of any oil or fuel from heavy equipment into surface waters.

Fisher, John

From: Gavan, Larry (OCR)
Sent: Thursday, July 26, 2007 8:41 AM
To: Rhur, Robbie (OCR); Munson, Robert (OCR); Fisher, John
Subject: Fwd: CSX Rail Line Abandonment in Portsmouth

If CSX had approved Annual Specs, for 2007 they would apply to the construction of tracks and related structures. The exact nature of the project has less importance because CSX does not have approved Ann. Specs, for 2007, therefore, the project would need to comply with the requirements of the local program. Please let me know if you'd like to discuss further.

Thanks
Larry

Bob: you probably know about this already but here's an update

Larry: can you shed light onto John's question?

Robbie:

As we discussed, do the annual specifications for ESC and SWM for railroad construction project also apply to the abandonment of a rail line? I am doing an in house review under federal consistency for a CSX proposal to abandon a 0.5 mile section of rail line in Portsmouth. The action would involve the removal of the rails, ties, and possibly the upper layer of ballast. No sub grade work is proposed.

Please advise. Thanks,

John

John E. Fisher

Virginia Department of Environmental Quality

Division of Environmental Enhancement

Office of Environmental Impact Review

629 East Main Street, #633

Richmond, Virginia 23219

(804) 698-4339

(804) 698-4319 fax

7/30/2007

jefisher@.deq.virginia.gov <mailto:jefisher@deq.virginia.gov>

www.deq.virginia.gov <http://www.deq.virginia.gov/>

Robbie Rhur
Environmental Impact Review Coordinator
804-371-2594
Robbie.Rhur@.dcr.Virginia.gov

Fisher.John

From: Rhur, Robbie (OCR)
Sent: Thursday, July 26, 2007 8:59 AM
To: Fisher.John
Subject: Fwd: CSX Rail Line Abandonment in Portsmouth



Robbie Rhur.vcf
(337 B)

John:

Larry feels that this would still involve local E & S review because the removal of the track would leave exposed ground that will erode during rain events. Further, due to the regular application of herbicide, it is likely that plant stabilization may take time and E & S measures would need to remain in place, unless they gravel the area immediately. Either way because they do not have current Annual Specifications in place with the State the entire E & S matter is under local jurisdiction.

Robbie Rhur
Environmental Impact Review Coordinator
804-371-2594
Robbie.Rhur@dcr.Virginia.gov

>> Larry Gavan 07/26/07 8:40 AM >>

If CSX had approved Annual Specs, for 2007 they would apply to the construction of tracks and related structures. The exact nature of the project has less importance because CSX does not have approved Ann. Specs, for 2007, therefore, the project would need to comply with the requirements of the local program. Please let me know if you'd like to discuss further. Thanks Larry

Bob: you probably know about this already but here's an update

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Robbie:

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Please advise. Thanks,

John

John E. Fisher

Virginia Department of Environmental Quality

Division of Environmental Enhancement

Office of Environmental Impact Review

629 East Main Street, #633

Richmond, Virginia 23219

(804) 698-4339

(804) 698-4319 fax

jefisher@deq.Virginia.gov <mailto:jefisher@deq.Virginia.gov>
\\

www.deq.Virginia.gov <http://www.deq.Virginia.gov/>

Robbie Rhur
Environmental Impact Review Coordinator
804-371-2594
Robbie.Rhur@dcr.Virginia.gov